

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

Philip Wong, Frederic Chaussy, and Leslie Marie Shearn, individually, on behalf of all others
similarly-situated, and on behalf of the general public,
Plaintiffs,

v.

HSBC Mortgage Corporation (USA); HSBC Bank USA, N.A.; and DOES 1-50, inclusive,
Defendants.

Case No. 3:07-CV-2446 MMC

NOTICE OF COLLECTIVE ACTION

**TO: ALL PRESENT AND FORMER HSBC MORTGAGE CORP. (USA) RETAIL
MORTGAGE LENDING CONSULTANTS, SENIOR RETAIL MORTGAGE LENDING
CONSULTANTS, AND PREMIER MORTGAGE SALES OFFICERS (“LOAN
OFFICERS”) WHO WORKED FOR HSBC MORTGAGE CORP. (USA), (“HMCU”)
FROM MAY 7, 2004 TO THE PRESENT.**

**RE: FAIR LABOR STANDARDS ACT LAWSUIT FILED AGAINST HMCU AND
HSBC BANK USA, N.A. (“HBUS”)**

INTRODUCTION

The purpose of this Notice is to inform you of a collective action lawsuit brought against HMCU and HBUS, to advise you of how your rights may be affected by this action, and to instruct you on the procedure to make a claim if you choose to do so.

DESCRIPTION OF THE ACTION

On May 7, 2007, an action was filed against Defendants HMCU and HBUS on behalf of the named Plaintiffs and all other similarly-situated individuals who worked as Loan Officers or Sales Assistants¹ for HMCU during the past three years. Plaintiffs claim that HMCU and/or HBUS misclassified them as exempt from overtime. Specifically, the action alleges that these individuals are owed overtime pay under the federal Fair Labor Standards Act (“FLSA”), 29

¹ Sales Assistants are not part of the present notice.

U.S.C. § 207, for hours worked in excess of forty (40) per week. Plaintiffs also seek an additional amount as liquidated damages, as well as attorneys' fees and costs. This litigation is currently in the early pretrial stage.

Generally, the overtime provisions of the FLSA require that, for all hours over forty hours per week that an employee works, the employer must compensate the employee at the rate of one and one-half times his or her regular hourly rate, unless that employee is properly classified as "exempt" from the overtime provisions of the FLSA. The Plaintiffs in this lawsuit claim that during one or more weeks of their employment with HMCU, they worked in excess of forty hours, but were not paid overtime at the rate of one and one-half times their hourly rate for the hours they worked in excess of forty.

HMCU and HBUS deny Plaintiffs' allegations in their entirety. Specifically, HMCU and HBUS assert that HMCU's current and former Loan Officers—including Plaintiffs and the class of employees Plaintiffs seek to represent—were properly classified as exempt from the receipt of overtime wages because these current and former employees are, and at all times were, primarily performing the work of overtime-exempt employees. HMCU also contends that it properly paid all of its current and former Loan Officers.

PERSONS ELIGIBLE TO RECEIVE THIS NOTICE

The named Plaintiffs seek to sue on behalf of themselves and also on behalf of other employees with whom they are similarly-situated. Those individuals that Plaintiffs allege are similarly-situated are current and former Loan Officers employed by HMCU anywhere in the United States from May 7, 2004 to the present.

This notification is only for the purpose of determining the identity of those persons who wish to be involved in this case and has no other purpose. Your right to participate in this lawsuit may depend on a later decision by the United States District Court that you and the representative Plaintiffs are actually "similarly-situated."

YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT

If you are or were a Loan Officer at HMCU during the previous three years, you may have a right to participate in this lawsuit. Enclosed you will find a document entitled "Plaintiff Consent Form and Declaration." If you choose to join this lawsuit, and thus participate in any recovery that may result from this lawsuit, assuming the Court determines that you are similarly-situated to the named Plaintiffs, it is extremely important that you read, sign and return the Consent Form and Declaration by mail to Plaintiffs' counsel at the following address:

Nichols Kaster & Anderson, PLLP
Attn. Paul Lukas
4600 IDS Center
80 S. 8th Street
Minneapolis, MN 55402
Toll-Free Telephone: (877) 448-0492
Facsimile: (612) 215-6870

The "Plaintiff Consent Form and Declaration" must be postmarked by [60 days after new notice is mailed], 2008.

EFFECT OF JOINING OR NOT JOINING THIS LAWSUIT

If you choose to join this action, you and HMCU and HBUS will be bound by any ruling, judgment, or award, whether favorable or unfavorable. You will also be bound by, and will share in, any settlement that may be reached on behalf of the class. In addition, Nichols Kaster & Anderson will seek to be compensated for their efforts in litigating this case, at least 1/3 of all proceeds, and up to a combined 40% of all recovery, which will proportionately reduce the award that each class member would receive.

You should also understand that if you join the lawsuit, then you may, but will not necessarily, be required to provide documents to HMCU's and HBUS' lawyers and/or attend a deposition and answer HMCU's and HBUS' lawyers' questions under oath.

If you decide to participate in this action, you will not incur any costs at all during or after the litigation process. Nichols Kaster & Anderson will pay all costs from any monies it

recovers if the lawsuit is successful. Payment of these costs will reduce any monies, if any, ultimately paid to the class members.

If you do not join this action, you will not be bound by any ruling, judgment, award, or settlement, entered in this case, favorable or unfavorable. If you do not to join this action, you are free to take action on your own.

STATUTE OF LIMITATIONS

The FLSA has a statute of limitations of two years which can be extended to three years under certain circumstances. If you choose to join this action and the Court finds in favor of the Plaintiffs, you may be able to recover back wages only during weeks you worked within either two or three years of the date you file your "Plaintiff Consent Form." If you choose not to join in this action, then you may file your own action. Be advised that the clock will still be running on your time limit for filing your own action, if you do not join this lawsuit.

NO RETALIATION PERMITTED

The law prohibits retaliation against employees for exercising their rights under the FLSA. Therefore, HMCU and HBUS are prohibited from discharging you or retaliating against you in any other manner because you choose to participate in this action.

YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to join this case by filing a Plaintiff Consent Form, you will be agreeing to representation by Plaintiffs' Counsel:

Nichols Kaster & Anderson, PLLP

Donald H. Nichols, Paul J. Lukas, and Tim Selander
4600 IDS Center, 80 South 8th Street
Minneapolis, MN 55402

Nichols Kaster & Anderson, LLP

Bryan Schwartz and Matt Helland
One Embarcadero Center, Suite 720
San Francisco, CA 94111
Toll Free Telephone: (877) 448-0492
Facsimile: (612) 215-6870
www.nka.com

The Plaintiffs' attorneys are being paid on a contingency fee and/or statutory basis, which means that if there is no recovery, there will be no attorneys' fees. The specific terms and conditions of representation will be contained in a fee agreement entered into by Plaintiffs' attorneys and you.

FURTHER INFORMATION

Further information about this lawsuit or this notice can be obtained by contacting attorneys for Plaintiffs:

BRYAN SCHWARTZ
NICHOLS KASTER & ANDERSON, LLP
One Embarcadero Center, Suite 720
San Francisco, CA 94111
Telephone: (877) 448-0492
Facsimile: (415) 421-1700
Email: Schwartz@nka.com
www.nka.com

You may also contact attorneys for Defendants:

MICHELLE BARRETT
LITTLER MENDELSON, P.C.
650 California Street, 20th Floor
San Francisco, California 94108
Telephone: 1 (888) 548-8537
Facsimile: (415) 399-8490
Email: MBarrett@littler.com
www.littler.com

YOU SHOULD NOT CONTACT THE COURT AT THIS TIME.

CONCLUSION

ATTORNEYS FOR PLAINTIFFS HAVE BEEN PERMITTED TO SEND THIS NOTICE BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, THE HONORABLE MAXINE CHESNEY, UNITED STATES DISTRICT COURT JUDGE.

THE COURT HAS MADE NO DECISION IN THIS CASE ABOUT THE MERITS OF PLAINTIFFS' CLAIMS OR OF DEFENDANTS HMCU'S OR HBUS' DEFENSES. IN ADDITION, THE COURT IS NOT ENCOURAGING INDIVIDUALS TO JOIN THIS LAWSUIT, NOR IS IT DISCOURAGING INDIVIDUALS FROM DOING SO.

Donald H. Nichols, MN State Bar No. 78918
(admitted **pro hac vice**)
Paul J. Lukas, MN State Bar No. 22084X
(admitted **pro hac vice**)
Tim C. Selander, MN Bar No. 0387016
(admitted **pro hac vice**)
NICHOLS KASTER & ANDERSON, PLLP
4600 IDS Center
80 S. 8th Street
Minneapolis, MN 55402

Bryan J. Schwartz, CA State Bar No. 209903
Matthew C. Helland, CA State Bar No. 250451
NICHOLS KASTER & ANDERSON, LLP
One Embarcadero Center, Suite 720
San Francisco, California 94111

Attorneys for Plaintiffs and the Class

CONSENT FORM AND DECLARATION
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

Case No. C 07-2446 MMC

I hereby consent to join the lawsuit against HSBC Mortgage Corporation (USA) ("HMCU") and HSBC Bank USA, NA ("HBUS") as a Plaintiff to assert claims against them for violations the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

I certify under the penalty of perjury that the following is true and correct: During the past three years, there were occasions where I worked over 40 hours per week for HMCU and HBUS and did not receive overtime compensation.

I worked as (please check all that apply):

- ☐ **Sr. Retail Mort. Lending Consultant**
- ☐ **Retail Mort. Lending Consultant**
- ☐ **Premier Mortgage Sales Officer**
- ☐ **Other Mortgage Sales Employee**

Signature

Date

Print Name

Address (with apartment number if applicable)

Print Name

City, State, Zip Code

Best Phone Numbers

E-Mail Address

Social Security Number

Emergency Contact

Location(s) Where I Worked

Fax or Mail To:

Nichols Kaster & Anderson, PLLP

Attn: Paul Lukas

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